

LEGISLATIVE AUDIT COMMISSION



Review of
Department of Professional Regulation
Two Years Ended June 30, 2001

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REVIEW: 4157
DEPARTMENT OF PROFESSIONAL REGULATION
TWO YEARS ENDED JUNE 30, 2001

FINDINGS/RECOMMENDATIONS - 12

ACCEPTED - 12

REPEATED RECOMMENDATIONS - 6

PRIOR AUDIT FINDINGS/RECOMMENDATIONS - 20

This review summarizes the audit of the Department of Professional Regulation, for the two years ended June 30, 2001, filed with the Legislative Audit Commission March 12, 2002. The auditors performed a compliance audit. In addition, they examined the financial statements of the Department and found them to be fairly presented.

The Department of Professional Regulation is responsible for maintaining proper standards of competence by license holders and to protect the public from those who abuse their licenses. This responsibility encompasses licensing individuals either through issuance of an initial license or by license renewal, administering examinations as a requisite to licensure in certain professions, establishing rules for the proper conduct of licensees, performing investigations into complaints filed against licensees, and taking disciplinary action against licensees determined to have violated the laws or rules governing their profession.

The Department regulates 50 different professions, trades and occupations, issuing 159 separate licensure categories and administers 46 licensure acts.

The current Director is Mr. Leonard Sherman, who was appointed Director on January 19, 1999. His service as a staff attorney for the Department concluded in 1977.

The average number of employees by division is as follows:

Division	FY01	FY2000	FY99
Director's Staff	15	16	16
Internal Audit	5	5	5
Legal & Legislative Affairs	8	7	9
Tactical Diversion	1	1	1
Licensing & Testing	64	68	66
State-Wide Enforcement	115	118	122
Human Resources	5	6	9
Fiscal Operations	16	15	17
Formal Hearings	2	2	1
Chief Deputy Director	35	35	35
Medical Coordinator	3	2	2
Administrative Services	35	34	32
TOTAL	304	309	315

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Appendix A indicates during fiscal year 1999 the Department granted 51,001 new licenses, renewed 161,997 licenses, accepted 9,702 complaints, closed 10,507 investigations (including complaints where no investigation was warranted), issued 5,004 orders for disciplinary action, and collected \$16.9 million in fees. Appendix B, based on information provided by the Department, shows the number of complaints accepted, investigations closed, and actions taken against licensees by profession for both fiscal years 2001 and 2000. The number of investigations closed does not include the number of cases where a complaint did not warrant an investigation.

Expenditures From Appropriations

The General Assembly appropriated a total of \$25,209,600 from 14 different funds during FY01. Appendix C summarizes these appropriations and expenditures for the period under review. Costs associated with 11 of the professions regulated by the Department are paid from those respective professions' individual funds. The costs associated with the other professions regulated by the Department are paid from the General Professions Dedicated Fund. Overall general costs of the Department, (i.e., costs associated with Department management) are paid from the General Revenue Fund. Finally, in FY97, the Department began using the Professions Indirect Cost Fund to pay all agency allocable indirect costs. Of the total appropriated in FY01, \$1,685,800 was from the General Revenue Fund. Total expenditures from all funds increased from \$22,039,125 in FY99 to \$23,211,150 in FY01, an increase of \$1,172,025, or 5.3%.

Appendix D indicates expenditures for FY01, FY2000, and FY99 by major object code.

Cash Receipts

The Department collects fees in connection with the licensing of various professions and occupations. Over the past several years the Department has implemented 10 dedicated funds to separately account for the costs of administering several professions in addition to other professions funded through the General Revenue Fund. Cash receipts totaled \$16,914,383 in FY01, and \$30,978,376 in FY2000. Generally, variances in receipts were due to fee changes, renewal periods, and changes in the number of licensees. The table in Appendix E summarizes the revenues recorded in the various funds.

Locally Held Funds

Appendix F summarizes the locally held and administered funds of the Department for the two years under review. Department policies and procedures authorize the deposit of monies in local financial institutions for investigative operations and payments including the purchase of evidence, procurement of surveillance/investigative equipment, and the employment of persons to obtain evidence. The General Official Advance Fund may be used by professions other than medical for receipts and expenditures related to the acquisition of evidence for investigations. The cash balances in the funds have decreased by a total of 76% since FY99.

Property and Equipment

Appendix G provides a summary of changes in property and equipment. Property and equipment increased from \$3,263,201 as of June 30, 1999 to \$3,958,833 as of June 30, 2001. Approximately \$356,940 consists of automobiles.

Accounts Receivable

As of June 30, 2001, the Department's accounts receivable totaled \$386,000, with a substantial portion consisting of fines receivable (uncollected disciplinary fines assessed by the Department). Of the \$315,000, \$274,000 is current and \$112,000 is past due, and \$71,000 is estimated uncollectible.

Accountants' Findings and Recommendations

Condensed below are the 12 findings and recommendations included in the audit report. There were six repeated recommendations. The following recommendations are classified on the basis of information provided by Leonard A. Sherman, Director of the Department of Professional Regulation, in a letter dated June 7, 2002.

Accepted

- 1. Strengthen controls over the calculation of the amounts to be transferred into the Professional Indirect Cost Fund and implement adequate review procedures to ensure amounts transferred are sufficient to comply with statute. (Repeated-1999)**

Findings: The Department did not maintain accurate cost allocation schedules for the Professional Indirect Cost Fund.

The Professional Indirect Cost Fund is used to allocate indirect costs to individual professions. During the year, the professions make quarterly transfers into the Fund to pay for the indirect costs based on a pre-fiscal year budget. At the end of the fiscal year, the Department analyzes costs incurred during the period, and determines how much money each profession should have paid for indirect costs. When the post-fiscal year indirect cost report is prepared, the Department compares actual and estimated indirect costs. In accordance with the purpose of the fund, each profession pays indirect costs equal to the estimated amount. If a profession has under or overpaid into the fund, as determined by the annual reconciliations, the adjustment should be calculated into the subsequent year's transfers.

The auditors noted that the indirect cost allocation schedules for both fiscal year 2000 and 2001 contained errors resulting in incorrect amounts being charged to individual professions, and therefore errors in the amount transferred from individual professions to the Professional Indirect Cost Fund.

Accepted - continued

For fiscal year 2000, Department officials transferred amounts from 4 profession funds which were significantly less than the projected amounts calculated at the beginning of the fiscal year. The lesser amounts transferred caused the Professional Indirect Cost Fund to be shorted a total of \$1,171,646. The four professions whose funds were noted to have insufficient transfers-out were Dental, Optometry, Podiatry and Nursing. For fiscal year 2001, Department officials transferred amounts from the Nursing Profession Fund which were significantly less than the projected amount calculated at the beginning of the year. This caused the Professional Indirect Cost Fund to be shorted a total of \$1,631,627.

Statute states that in any fiscal year in which the fees and fines generated by a specific profession, trade, or occupation are insufficient to finance the necessary direct or allocable indirect costs of licensing and regulating that profession, trade, or occupation, the remainder of those costs shall be financed from appropriations payable from revenue sources other than fees and fines. Variations between the planned and actual cost allocations for the prior fiscal year shall be adjusted into the Department's planned cost allocation for the next fiscal year.

According to Department personnel, the underpayments and mathematical errors were due to an inadequate reconciliation process and lack of supervisory review of the projected and actual transfers made by the Department. This resulted in certain professions not paying their share of indirect costs, as required by statute. If professions do not have the funds to pay legitimate expenditures of the fund, the specific profession Acts requires an increase in profession fee for the next subsequent renewal year.

Response: Accepted. The calculated transfer amounts differ from the projected transfer amounts for various reasons. The Nurse Fund discrepancy was due to an error found in the spreadsheet. As soon as the error was discovered it was corrected and a transfer was made into the Indirect Cost Fund to reconcile the error. The Dental transfer amount differed due to an inadequate fiscal year end fund balance. Within the first quarter of the following fiscal year, revenues from the dental license renewal fees raised the cash balance enough to make up for transfer that couldn't previously occur. The transfers in question regarding the Optometric and Podiatry Funds differed from the projected amounts because of the timing of the receipt of the previous year's actual costs from our independent cost study. The budgeted costs were higher than the actual costs and by the time the actual costs were determined a higher amount had already been transferred.

The spreadsheet is now being reviewed by the supervisor prior to any transfers. Since revenue generated from the Dental fee increase will not be received until early in FY03, the fourth quarter transfer from the Dental Fund into the Indirect Cost Fund may be less than required. The agency will correct the shortage as promptly as possible upon receipt of adequate revenues.

**2. Staff the Design Profession Dedicated Employee positions as mandated.
(Repeated-1993)**

Findings: The Department has not staffed the Design Profession Dedicated Employee positions in accordance with statute. DPR has not employed a licensing clerk, and another employee performs services for other professions.

Response: Accepted. DPR officials stated that dedicating all Design Profession employees would not be an efficient use of staff. The Department has drafted legislation to remove the statutory requirement that Design Profession employees work exclusively in the licensing of design officials. However, the Department was unable to find a sponsor willing to carry the bill during the 2002 session, and no other suitable bill was found to be amended.

3. Perform a detailed review of all major internal accounting and administrative controls according to the Fiscal Control and Internal Auditing Act. (Repeated-1995)

Findings: The Department's Internal Audit Division has not performed systematic detailed reviews of all major systems of internal accounting administrative controls. The Internal Audit Unit focused on areas deemed high-risk and omitted testing Personnel and Payroll and Revenues, Refunds and Receivables.

The Chief Internal Auditor attributes the cause of the problem to understaffing in the Internal Audit Unit. The Audit Plan would require approximately five more auditors.

Response: Concur. Future audit plans will be closely reviewed to determine if efficiencies are possible. Concurrently, the Department will try to transfer one operational position to Internal Audit in FY03 and FY04.

4. Implement controls to ensure employee performance evaluations are completed timely. (Repeated-1993)

Findings: The Department did not conduct employee performance evaluations on a timely basis. Six of 35 employees tested did not have a performance evaluation performed on a timely basis. The evaluations were from two to eight months late. The Department has made the evaluation process a priority. However, the Department has not initiated sufficient controls to ensure supervisory personnel complete outstanding evaluations.

Response: Due to the failure of intermediate measures which should have resolved this problem the Department will implement a plan for FY03 which details clear, substantial, and quickly escalating discipline for any supervising staff who fail to meet evaluation deadlines.

5. Utilize Regulatory Administration and Enforcement System (RAES) to fullest extent and ensure consistent and appropriate documentation is maintained in the official case file. (Repeated-1991)

Findings: The Department has not maintained adequate case activity in RAES.

Accepted - continued

In testing 60 cases, auditors noted 13 separate instances in which the RAES was not properly maintained. In seven of the files reviewed, activity on the cases was not recorded in RAES. In six files reviewed, activity was being recorded on RAES, but the information was not consistent with or supported by the official case file. RAES was a significant investment (\$1,500,000 for the Department).

The Department stated that RAES is a monitoring tool utilized by management and not the official case record.

Response: The Department concurs that complete and accurate information to ensure reliability is a valuable management tool. Entries on RAES however are only one component utilized by Department management to assess the activities of Enforcement personnel. RAES entries and regular review of case files are the ultimate measure of consistent and appropriate documentation. Enforcement and Information Technology consistently attempt to rectify RAES programs to better monitor efficiency. The Department is currently drafting the requirements for the Integrated Licensing and Enforcement System that will replace RAES.

6. Continue efforts to reduce the backlogs of cases assigned to the Medical Coordinator, and consider hiring additional Medical Coordinators. (Repeated-1999)

Findings: DPR was unsuccessful in reducing the backlog of cases waiting for review by its three Medical Coordinators. The Chief Medical Coordinator and Deputy Medical Coordinator serve as the chief enforcement officers in reviewing cases and making recommendations to the Medical Disciplinary Board on whether cases should be prosecuted or closed.

A 1997 program audit found serious problems in timeliness with cases awaiting review by the Medical Coordinator. As of November 1996, 358 cases had been assigned to the Medical Coordinator for at least 121 days. During an LAC meeting on December 9, 1997, DPR officials stated that there was no backlog at all relating to medical cases. However, as of August 1999, there were 100 such cases. Times ranged for these cases from 14 days to 601 days. According to the auditors, at the start of February 2001 the weekly combined caseload was over 500 cases. The caseload declined to over 400 cases by the end of July 2001.

Response: DPR concurs and will continue to monitor attempts by the Medical Coordinators to reduce their caseloads. DPR, in consultation with the Medical Disciplinary Board, plans to implement in early FY03 a new Medical Coordinator structure which will feature a full-time staff Medical Coordinator and additional part-time physician specialists for complex cases.

7. Follow-up on the non-return of certification forms for license and automotive liability insurance for State vehicles, as required by statute.

Findings: Auditors tested 65 State vehicle assignments and noted 32 without certification of license and automotive liability. Ten additional assignments were for travel reimbursement on personal vehicles, but not State-owned vehicles.

Response: Concur. DPR will insure that the certifications of license and automotive liability coverage are completed.

8. Employ the number of dental investigators required by statute.

Findings: The Department did not staff the Dental Investigator positions in accordance with statutory requirements.

The Dental Practice Act requires the Department to employ not less than one full-time investigator for every 3,000 Dentists and Dental Hygienists in the State.

During FY01, the Department licensed 14,910 Dentists and Dental Hygienists. Therefore the Department should employ five full-time dental investigators. As of June 30, 2001, the Department employed only three full-time dental investigators, at an annual cost of \$172,512.

According to Department officials, they did not employ the required number of dental investigators because of insufficient funds in the Dental Profession Fund. There were insufficient funds due to the Department's failure to adequately monitor the fund's balance, correctly calculate the amounts due to the Professional Indirect Cost Fund and implement timely fee increases as needed. Fee increases for this profession are difficult to implement because the fees are outlined in the statutes instead of in the Department's rules like most other professions. Furthermore, as noted in Finding 01-1, the Dental Profession Fund owed the Professional Indirect Cost Fund at the end of FY00 (\$81,982) and due to the 2-year renewal cycle of this profession, is also expected to owe the fund at the end of FY02.

Response: Concur. The Department currently has 10 approved headcount in the Dental Fund. At this time all 10 positions are filled. The 10 include four full-time investigators and one Dental investigation supervisor. The reason for moving a dental investigator off of Dental payroll (as shown in the June 30 payroll) was due to the fact that the revenues were not projected to cover the expenses. In an effort to reduce the expenses the Department transferred one Dental investigator to non-Dental investigations. The Dental Board recommends fee levels that only maintain a minimal balance in the Dental Fund. DPR has worked with the Board over a long period of time to establish and maintain fee levels that would allow the fund to have an adequate cash balance throughout the peaks and valleys of a normal renewal cycle. The Department along with the Dental Board has been pursuing fee increases that will be effective during the next renewal period. Legislative approval was obtained to increase the biennial renewal fee for Dentists and Hygienists.

9. Adopt rules consistent with the statutes regarding pharmacy closings.

Findings: The Department failed to develop rules consistent with the Pharmacy Practice Act of 1987.

Accepted - concluded

The Department's rules state a pharmacy's license shall expire 30 days after the pharmacist in charge dies or leaves the employment of the licensed pharmacy. Further, every pharmacist in charge who ceases to function in that capacity has a duty to report to the Department within 30 days of such date. Likewise, the owner of the Pharmacy also has a duty to report to the Department within 30 days of the death of the pharmacist in charge.

The Pharmacy Practice Act of 1987 states the Department shall provide for the licensure of every pharmacy doing business in the State of Illinois. A pharmacy license shall expire 10 days after the pharmacist in charge dies or leaves the employment of the licensed pharmacy. Furthermore, when such an event occurs, the pharmacist in charge or the pharmacy owner has the duty to report to the Department within 10 days of the noted event.

According to Department personnel, HB 2463 was introduced in fiscal year 2001 to change the wording of the statute from 10 to 30 days. However the bill did not pass.

Response: DPR will draft a rule amendment to make the administrative rules consistent with statute.

10. Comply with the statutes or seek legislative changes regarding when issuing licenses.

Findings: DPR issued two occupational therapist licenses without proof of U.S. citizenship. DPR stated this requirement has not been enforced since 1990, and it has been deleted from similar profession Acts.

Response: DPR seeks to remove the proof of citizenship requirement legislatively, but could not successfully find a bill sponsor during the 2002 session.

11. Devote adequate resources to ensure the registered nurses certification is filed with the Department of Public health timely, as required by statute.

Findings: DPR did not file the required an annual certification concerning the number of registered nurses in each region currently engaged in the practice of professional nursing.

Response: DPR will comply.

12. Continue to prepare the reports and maintain documentation as required by statute.

Findings: DPR did not submit an annual report to the General Assembly concerning the number or reports reviewed by the Department from health care facility administrators

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regarding registered nurses or licensed practical nurses that are habitually intoxicated or addicted to drugs.

Response: The Enforcement Division submitted the annual report to the General Assembly as required and will ensure the annual report is submitted accordingly.

Emergency Purchases

The Illinois Purchasing Act (30 ILCS 505/1) states that “the principle of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts ...” The law also recognizes that there will be emergency situations when it will be impossible to conduct bidding. It provides a general exemption for emergencies “involving public health, public safety, or where immediate expenditure is necessary for repairs to State property in order to protect against further loss of or damage ... prevent or minimize serious disruption in State services or to insure the integrity of State records. The chief procurement officer may promulgate rules extending the circumstances by which a purchasing agency may make ‘quick purchases’, including but not limited to items available at a discount for a limited period of time.”

State agencies are required to file an affidavit with the Auditor General for emergency procurements that are an exception to the competitive bidding requirements per the Illinois Purchasing Act. The affidavit is to set forth the circumstance requiring the emergency purchase. The Commission receives quarterly reports of all emergency purchases from the Office of the Auditor General. The Legislative Audit Commission is directed to review the purchases and to comment on abuses of the exemption.

The Department filed no affidavits for emergency purchases in FY2000 or FY01.

Headquarters Designations

The State Finance Act requires all State agencies to make semiannual headquarters reports to the Legislative Audit Commission. Each State agency is required to file reports of all of its officers and employees for whom official headquarters have been designated at any location other than that at which their official duties require them to spend the largest part of their working time.

The Department of Professional Regulation indicated as of July 2001, the Department had 313 employees assigned to locations other than official headquarters.

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